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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 DONOVAN JOSEPH,

Case No.: 2:18-cv-02301-KJD-GWF

9 Petitioner

**ORDER**

10 v.

11 BRIAN WILLIAMS, et al.,

12 Respondents  
13

14 Petitioner Donovan Joseph has filed a 28 U.S.C. § 2254 habeas corpus petition (ECF No.  
15 1). The court has reviewed the petition pursuant to Habeas Rule 4, and it shall be served on  
16 respondents.

17 A petition for federal habeas corpus should include all claims for relief of which  
18 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever  
19 barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive  
20 petitions). If petitioner is aware of any claim not included in his petition, he should notify the  
21 court of that as soon as possible, perhaps by means of a motion to amend his petition to add the  
22 claim.  
23

1 Joseph has also filed a motion for appointment of counsel (ECF No. 3). There is no  
2 constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v.*  
3 *Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The  
4 decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196  
5 (9th Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th  
6 Cir.), cert. denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities  
7 of the case are such that denial of counsel would amount to a denial of due process, and where  
8 the petitioner is a person of such limited education as to be incapable of fairly presenting his  
9 claims. *See Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th  
10 Cir.1970). Here, Joseph's petition clearly presents the issues that he wishes to raise, and the  
11 legal issues do not appear to be particularly complex. Therefore, counsel is not justified.  
12 Joseph's motion is denied.

13 **IT IS THEREFORE ORDERED** that the Clerk **shall ELECTRONICALLY SERVE**  
14 the petition (ECF No. 1) on the respondents.

15 **IT IS FURTHER ORDERED** that the Clerk shall add Aaron D. Ford, Nevada Attorney  
16 General, as counsel for respondents.

17 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,  
18 including potentially by motion to dismiss, within **90 days** of service of the petition, with any  
19 requests for relief by petitioner by motion otherwise being subject to the normal briefing  
20 schedule under the local rules. Any response filed shall comply with the remaining provisions  
21 below, which are entered pursuant to Habeas Rule 5.

22 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents in this  
23 case shall be raised together in a single consolidated motion to dismiss. In other words, the court

1 does not wish to address any procedural defenses raised herein either *in seriatum* fashion in  
2 multiple successive motions to dismiss or embedded in the answer. Procedural defenses omitted  
3 from such motion to dismiss will be subject to potential waiver. Respondents shall not file a  
4 response in this case that consolidates their procedural defenses, if any, with their response on  
5 the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly  
6 lacking merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a)  
7 they shall do so within the single motion to dismiss not in the answer; and (b) they shall  
8 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set forth in  
9 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,  
10 including exhaustion, shall be included with the merits in an answer. All procedural defenses,  
11 including exhaustion, instead must be raised by motion to dismiss.

12 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents shall  
13 specifically cite to and address the applicable state court written decision and state court record  
14 materials, if any, regarding each claim within the response as to that claim.

15 **IT IS FURTHER ORDERED** that petitioner shall have **45 days** from service of the  
16 answer, motion to dismiss, or other response to file a reply or opposition, with any other requests  
17 for relief by respondents by motion otherwise being subject to the normal briefing schedule  
18 under the local rules.

19 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed herein  
20 by either petitioner or respondents shall be filed with a separate index of exhibits identifying the  
21 exhibits by number. The CM/ECF attachments that are filed further shall be identified by the  
22 number or numbers of the exhibits in the attachment.  
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1       **IT IS FURTHER ORDERED** that the parties SHALL SEND paper courtesy copies of  
2 all exhibits to Clerk of Court, Attn: Staff Attorney, 400 S. Virginia St., Reno, NV, 89501.  
3 Additionally, in the future, all parties shall provide courtesy copies of any additional exhibits  
4 submitted to the court in this case, in the manner described above.

5       **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (ECF  
6 No. 3) is **DENIED**.

7       Dated: January 14, 2019

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9 KENT J. DAWSON  
UNITED STATES DISTRICT JUDGE